

12-20-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

2005 MAR 10 A 11:48

CHARLENE MCADORY,

Petitioner,

v.

DENNY'S RESTAURANT,

Respondent.

AT

FCHR Case No. 23-03670

DOAH Case No. 04-2642

FCHR Order No. 05-041

DIVISION OF
ADMINISTRATIVE
HEARINGS

RSC

Clas

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Charlene McAdory filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 509.092 and 760.11, Florida Statutes (2003), alleging that Respondent Denny's Restaurant committed an unlawful public accommodations practice on the basis of Petitioner's race (Black) by refusing to serve Petitioner.

The allegations set forth in the complaint were investigated, and, on June 23, 2004, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful public accommodations practice had occurred.

Petitioner filed a Petition for Relief and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Jacksonville, Florida, on November 3 and 4, 2004, before Administrative Law Judge Robert S. Cohen.

Judge Cohen issued a Recommended Order of dismissal, dated December 20, 2004.

Pursuant to notice, public deliberations were held on March 4, 2005, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Petition for Relief.

Findings of Fact

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order after having been given an extension of time to do so by the Commission.

Petitioner's exceptions take issue with the facts found, and not found, by the Administrative Law Judge, and with the inferences drawn from the evidence presented.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

Further, as indicated above, the Commission's file does not contain a transcript of the proceeding on the merits before the Administrative Law Judge. With regard to findings of fact set out in Recommended Orders, the Administrative Procedure Act states, "The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law." Section 120.57(1)(I), Florida Statutes (2003). In the absence of a transcript of the proceeding before the Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See, National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988).

Finally, there is no indication on Petitioner's exception document that it was served on Respondent by Petitioner as is required by Fla. Admin. Code R. 28-106.110.

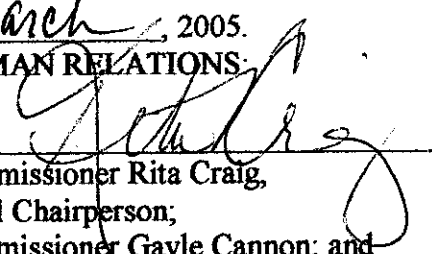
Petitioner's exceptions are rejected.

Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

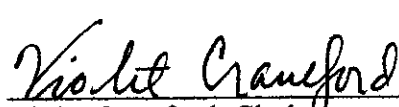
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 8th day of March, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Rita Craig,
Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Billy Whitefox Stall

Filed this 8th day of March, 2005,
in Tallahassee, Florida.



Violet Crawford, Clerk
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FCHR Order No. 05-041
Page 4

Robert S. Cohen, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 8th day of March, 2005.

By: Kristin Crawford
Clerk of the Commission
Florida Commission on Human Relations